Oct 31. 78. Rec'd. N. H. Swayne

8 Otto. p. 142
Oct. 2. 1878

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~308~~ 50

ROBERT DUMONT, IMPLEADED WITH WILLIAM E. BOORAEM, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED NOVEMBER 10, 1875.

SUPREME COURT OF THE UNITED STATES.

No. 308.

ROBERT DUMONT, IMPLEADED WITH WILLIAM E. BOORAEM, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Writ of error	1	1
Clerk's certificate	2	1
Declaration	5	2
Defendant's plea	11	4
Joinder	15	5
Verdict	18	6
Judgment	20	6
Bill of exceptions	23	7
Bond	45	14
Assignment of error	48	15
Joinder in error	50	15
Citation and service	52	16

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the southern district of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, between The United States of America and Robert Dumont, impleaded with William E. Booraem, a manifest error hath happened, to the great damage of the said Robert Dumont, as by his complaint appears: we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, 1875, in the said Supreme Court to be then and there held, that, the record and proceeding aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 18th day of January, in the year of our Lord one thousand eight hundred and seventy-five.

KENNETH G. WHITE, *Clerk.*

The foregoing writ is allowed. January 18, 1875.

SAM'L BLATCHFORD.

(Indorsed:) United States circuit court for the southern district of New York. Robert Dumont, impleaded with William E. Booraem, pl'ff in error, vs. The United States of America, def't in error. Writ of error. Filed Jan'y 18, 1875.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

2 I, Kenneth G. White, clerk of the circuit court of the United States for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from one to 51, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Robert Dumont, impleaded with William E. Booraem, plaintiff in error, against The United States of America, defendants in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this twenty-fourth day of September, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the said United States the one hundredth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

3 U. S. circuit court for the southern district of New York, in the second circuit.

Pleas before the judges of the circuit court of the United States of

America for the southern district of New York, in the second circuit, at the United States court buildings, in the city of New York, of the term of April, 1872, to wit, of the fourth day of October, in the year of our Lord one thousand eight hundred and seventy-two.

Witness the honorable Lewis B. Woodruff, one of the judges of the said circuit court.

KENNETH G. WHITE, *Clerk.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that heretofore, to wit, on the third day of August, 1872, in the April term of 1872, before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings, in the city of New York, came The United States of America, by Noah Davis, their attorney, and brought into the said court, before the aforesaid judges thereof, then there, their certain declaration against
4 Robert Dumont, impleaded, &c., being in custody, &c., of a plea of debt upon bond; which said declaration follows in these words, that is to say:

5 Circuit court of the United States of America for the southern district of New York, in the second circuit, of the tenth day of June, 1872, as yet of April term, in the year of our Lord one thousand eight hundred and seventy-two.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The United States of America, plaintiffs in this suit, by Noah Davis, their attorney, for the said southern district of New York, complain of William E. Booraem and Robert Dumont, defendants in this suit, the said defendant Robert Dumont being in custody, &c., of a plea that the said defendants render unto the said plaintiffs the sum of eight hundred and fifty $\frac{50}{100}$ dollars, lawful money of the United States of America, which the said defendants to the said plaintiffs owe and from them unjustly detain; debt on bond. For that whereas the said defendants heretofore, to wit, on the eighteenth day of January, in the year one thousand eight hundred and sixty-five, at the city of New York, to wit, at the southern district of New York aforesaid, and within
6 the jurisdiction of this court, by a certain bond, or writing obligatory, bearing date the day and year last aforesaid, sealed with the seals of the said defendants, which said bond or writing obligatory the said plaintiffs now here bring into court, and show to the said court, the said defendant, William E. Booraem, as principal, and the said defendant, Robert Dumont, as surety, became held and firmly bound unto the said plaintiffs in the sum of eight hundred and fifty $\frac{50}{100}$ dollars, for the payment whereof to the said plaintiffs the said defendants bound themselves, their heirs, executors, administrators, and assigns, jointly & severally, firmly by those presents.

And the said plaintiffs further say that the said bond or writing obligatory was and is subject to a certain condition thereunder written, to the effect following, that is to say: that if the above-bounden principal (the said defendant William E. Booraem meaning), or his heirs, executors, administrators, or assigns, should, on or before the expiration of one year from the date of the importation of the goods, wares, and merchandize thereinafter mentioned, well and truly pay, or
7 cause to be paid, unto the collector of customs for the port of

New York, the sum of four hundred and twenty-five $\frac{25}{100}$ dollars, or the amount, when ascertained, of the duties imposed by laws then existing, or to be thereafter enacted, to be due and owing upon the goods, wares, and merchandize imported by him in the Velma, , master, from Malaga, consisting of thirty-four p'k'g's wine, (W. E. B.), or should, in the mode prescribed by law, on or before the expiration of three years from the date of said importation, withdraw said goods, wares, and merchandise from the bonded store or public warehouse where they were deposited at the port of New York, and actually export them beyond the limits of the United States, or transport them within three years as aforesaid, in bond, to a port of the Pacific or western coast of the United States, under such regulations as the Secretary of the Treasury might from time to time prescribe, then that obligation was to be void; otherwise to remain in full force and virtue.

(25 cents internal-revenue stamp, cancelled.)

8 And the said plaintiffs aver, as a breach of the condition of the said bond or writing obligatory, that though the said time of one year, in the condition of the said bond or writing obligatory mentioned, has long since expired, that he, the said defendant, William E. Booream, or any one on his behalf, at the city of New York, to wit, at the southern district of New York aforesaid, and within the jurisdiction of this court, did not, within the said time of one year from the date of the importation of the said goods, wares, and merchandise, to wit, the said thirty-four p'k'g's wine (W. E. B.), well and truly pay, or cause to be paid, unto the collector of customs for the port of New York, the sum of four hundred and twenty-five $\frac{25}{100}$ dollars, or the amount, when ascertained, of the duties imposed by laws then existing or thereafter enacted, to be due and owing on the goods, wares, and merchandise, to wit, the goods, wares, and merchandise imported by him in the Velma from Malaga, , master, consisting of thirty-four p'k'g's wine (W. E. B.); nor did they (the said defendants), nor any one acting in their behalf in the mode prescribed by law, on or before the expiration of three years from the date of said

9 importation, withdraw said goods, wares, and merchandise from the bonded store or public warehouse where they were deposited at the port of New York, and actually export them beyond the limits of the United States, or transport them within three years as aforesaid in bond to a port of the Pacific or western coast of the United States, under such regulations as the Secretary of the Treasury did from time to time prescribe, but so to do have wholly neglected and refused, and still do neglect and refuse, to wit, at the southern district of New York aforesaid; by means of which said several premises an action hath accrued to the said plaintiffs to have and demand from the said defendants the said sum of money above demanded, together with their damages, by reason of the aforesaid unjust detention thereof, to one thousand dollars, and therefore they (the said plaintiffs) bring suit, etc.

NOAH DAVIS,
U. S. Attorney.

10 (Endorsed:) Bond No. 441. U. S. circuit court. The United States of America vs. William E. Booraem & Robert Dumont. Declaration. Noah Davis, U. S. district attorney.

Please take notice that a rule has been entered in this cause with the clerk of this court, at his office in the city of New York, requiring the

defendant Robert Dumont to plead to the declaration filed in this cause, and of which the within is a copy, within twenty days after service of a copy thereof and notice of said rule or judgment.

Dated August 3rd, 1872.

Yours, &c.,

NOAH DAVIS,
U. S. District Att'y.

To DANIEL MARVIN,
54 William St, Def'ts Dumont's Att'y.

Due service of a copy of the within declaration is hereby admitted.
Dated New York, August 5, 1872.

DAN. MARVIN,
Att'y for R. Dumont, Defendant.

11 U. S. Circuit court, southern district of New York.

THE UNITED STATES OF AMERICA,
vs.
WILLIAM E. BOORAEM & ROBERT DUMONT.

The defendant Robert Dumont, by Dan. Marvin, his attorney, comes separately and defends the wrong and injury when, &c., and says that the said bond or writing obligatory in the said declaration mentioned is not the deed of the above-named defendants, and of this he put himself upon the country, &c.

And for a further plea in this behalf, by leave of the court here for this purpose first had and obtained, he says that the defendants do not owe to the plaintiffs the said sum of one thousand dollars above demanded or any part thereof in manner and form as the said plaintiffs have above thereof complained against them, and of this the said defendant puts himself upon the country, &c.

And for a further plea in this behalf the said defendant, by
12 leave of the court here for this purpose first had and obtained, says that the said plaintiffs ought not to have or maintain this action aforesaid against the defendants, because he says that after the making of the said bond or writing obligatory, and before the commencement of this action, to wit, on the first day of February, in the year 1865, at the city of New York, the said defendants paid to the said plaintiffs the said sum of money above demanded, and also paid to the said plaintiffs all the duties due and payable upon all the merchandize in the condition of the said bond or writing obligatory mentioned; and this he is ready to verify. Wherefore he prays judgment if the said plaintiffs ought to have or maintain their action aforesaid thereof against the said defendants, &c.

DAN'L MARVIN,
Defts' Att'y.

SIR: Take notice that under the several pleas above pleaded, and according to the form of the statute in this behalf made and pro-
13 vided, this defendant, Robert Dumont, will give in evidence, prove, and insist, upon the trial of this cause, and in bar of any recovery of judgment therein, that amongst the wines imported by the defendant William E. Booraem by the ship Velma, as stated in the declaration, were twenty-five quarter casks of wine containing in all eight hundred and sixteen gallons of wine, the actual cost and value of which was less

than fifty cents per gallon; that is to say, not exceeding four hundred dollars in the whole, and that the actual duties chargeable thereon were only at the rate of twenty cents per gallon, and that the defendant, William E. Booraem has paid the duties on such wines at and after the rate of twenty cents per gallon, which have been accepted and received by the collector of the port of New York in full payment and satisfaction of all duties payable upon the importation of such wines.

All which matters will be proven on the trial of this cause in bar of the plaintiffs' action in this behalf.

Dated August 16, '72.

Yours, &c.,

DAN'L MARVIN,
Att'y for Def't Dumont.

To Hon. NOAH DAVIS,
Dis't Att'y U. S., & Plffs' Att'y in this action.

14 (Endorsed:) U: S. circuit court, southern district of New York. The U. S. of America vs. W'm E. Booraem & Robert Dumont. Separate pleas & notice of def't Robert Dumont. Dan. Marvin, att'y for Dumont. Serve' August 26, 1872.

15 U. S circuit court, southern district of New York.

THE UNITED STATES OF AMERICA
vs.
WILLIAM E. BOORAEM & ROBERT DUMONT.

And the said plaintiffs, as to the plea of the said defendant Dumont by him first above pleaded, and whereof he has put himself upon the country, do the like.

And the said plaintiffs as to the plea of the said defendant Dumont by him secondly above pleaded, and whereof he has put himself upon the country, do the like.

And the said plaintiffs, as to the plea of the said defendant Dumont by him thirdly above pleaded, say that the said plaintiffs by reason of anything by the said defendant Dumont in that plea alleged ought not to be barred from having and maintaining their aforesaid action thereof against the said defendants, because they say that after the making of the
16 said bond or writing obligatory and before the commencement of this action, to wit, on the first day of February, in the year 1865, nor at any time, at the city of New York, the said defendants did not pay to the said plaintiffs the said sum of money above demanded, and did not pay to the said plaintiffs all the duties due and payable upon all the merchandise in the condition of the said bond or writing obligatory mentioned, in manner and form as the said defendant Dumont has in his said third plea in that behalf alleged.

And this they, the said plaintiffs, pray may be enquired of by the country.

NOAH DAVIS,
U. S. Att'y.

(Endorsed:) U. S. circuit court, southern district of New York. The United States of America vs. William E. Booraem & Robert Du-
17 mont. Copy replication. Noah Davis, U. S. att'y. Filed replication October 4, 1872. D. Marvin, att'y for Dumont.

Due service of a copy of the within replication is hereby admitted. Dated New York, October 4, 1872.

DAN. MARVIN,
Att'y for Dumont, Defendant.

18 A day is given to the parties aforesaid before the judges aforesaid, at the United States court building, on the nineteenth day of October, 1874.

And now, at this day, to wit, on the twentieth day of October, in the year of our Lord one thousand eight hundred and seventy-four, in October term, 1874, before the honorable Nathaniel Shipman, judge of the circuit court of the United States, at the United States court building, in the city of New York, come the within-named plaintiffs and the within-named defendant Robert Dumont, by their respective attorneys, and the jurors of the jury summoned to try the said issue, being called, also come, who, to speak the truth of the matters within contained, being chosen, tried, and sworn, say upon their oath that the above-mentioned writing obligatory is the deed of the said defendant, as the said plaintiffs have above in that behalf alleged, and they assess the damages of the said plaintiffs, on occasion of the detaining the aforesaid debt, over and above their costs and charges by them about their suit in this behalf expended, to six cents, and for those costs and charges to six cents.

19 And as to the breaches by the said plaintiffs above assigned, the jurors aforesaid, upon their oath aforesaid, say, though the said time of one year in the condition of the said bond or writing-obligatory mentioned has long since expired, that he, the said defendant William Booraem, or any one on his behalf, at the city of New York, to wit, at the southern district of New York aforesaid, and within the jurisdiction of this court, did not, within the said time of one year from the date of the importation of the said goods, wares, and merchandise, to wit, the said thirty-four p'k'g's wine (W. E. B.), well and truly pay or cause to be paid unto the collector of customs for the port of New York the amount, when ascertained, of the duties imposed by laws then existing, or thereafter enacted, to be due and owing on the goods, wares, and merchandise, to wit, the goods, wares, and merchandise imported by him in the Velma, , master, from Malaga, consisting of thirty-four p'k'g's wine (W. E. B.); nor did they, the said defendants, nor any one acting on their behalf, in the mode prescribed by law, on or before the expiration of three years from the date of said im-

20 portation, withdraw said goods, wares, and merchandise from the bonded store or public warehouse where they were deposited, at the port of New York, and actually export them beyond the limits of the United States, or transport them within three years as aforesaid in bond to a port of the Pacific or western coast of the United States, under such regulations as the Secretary of the Treasury did from time to time prescribe, and that the said plaintiffs should recover their damages therefor.

And the said jurors assess the damages of the said plaintiffs by reason therefor, over and above their costs and charges by them about their suit in this behalf expended, for the duties ascertained and imposed by law as aforesaid, to the sum of two hundred and fifty-one dollars $\frac{50}{100}$ gold coin, with interest thereon in the sum of one hundred and one dollars $\frac{83}{100}$, gold coin, amounting in all to three hundred and fifty-three dollars $\frac{33}{100}$, gold coin, and for those costs and charges to six cents.

Therefore, it is considered that the said plaintiffs do recover against the said defendant Robert Dumont their said debt and their
21 damages aforesaid, on occasion of the detention thereof, together with their costs and charges aforesaid, by the jurors aforesaid in form aforesaid assessed, and also thirty-seven $\frac{70}{100}$, gold coin, for their costs and charges, by the court now here adjudged of increase to the said plaintiffs, with their assent, which said damages, costs, and charges in the whole amount to three hundred and ninety-one dollars $\frac{05}{100}$, gold coin.

And it is further considered that the said plaintiffs have execution against the said defendant Robert Dumont of the damages and costs aforesaid to three hundred and ninety-one dollars $\frac{05}{100}$, gold coin, by the jurors aforesaid in form aforesaid assessed, on occasion of the aforesaid breaches of the said writing obligatory, according to the form of the statute in such case made and provided.

And let the said defendant Robert Dumont, inasmuch as he has denied his deed, be taken, &c.

Judgment signed this 28th day of Nov., 1874.

R. E. STILWELL,
Dep. Clerk.

22 (Endorsed:) U. S. circuit court. The United States vs. William, E. Booraem & Robert Dumont. Judgment record. George Bliss, U. S. attorney.

Debt & interest, $353.35; costs, 37.70—$391.05, gold.
Filed Nov. 28, 1874.

23 Circuit court of the United States of America for the southern district of New York, in the second circuit, of the tenth day of June, as yet of April term, in the year of our Lord one thousand eight hundred and seventy two.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The United States of America, plaintiffs in this suit, by Noah Davis, their attorney, for the said southern district of New York, complain of William E. Booraem and Robert Dumont, defendants in this suit, the said defendant Robert Dumont being in custody, &c., of a plea that the said defendants render unto the said plaintiffs the sum of eight hundred and fifty $\frac{50}{100}$ dollars, lawful money of the United States of America, which the said defendants to the said plaintiffs owe and from them unjustly detain, debt on bond, for that whereas the said defendants heretofore, to wit, on the eighteenth day of January, in the year one thousand eight hundred and sixty-five, at the city of New York, to wit, at the southern district of New York aforesaid, and within the juris-
24 diction of this court, by a certain bond or writing obligatory bearing date the day and year last aforesaid, sealed with the seals of the said defendants, which said bond or writing obligatory the said plaintiffs now bring into court and show to the said court, the said defendant William E. Booraem, as principal, and the said defendant Robert Dumont, as surety, became, held and firmly bound unto the said plaintiffs in the sum of eight hundred and fifty $\frac{50}{100}$ dollars, for the payment whereof to the said plaintiffs the said defendants bound themselves, their heirs, executors, administrators, and assigns, jointly and severally, firmly by those presents.

And the said plaintiffs further say that the said bond or writing obligatory was, and is, subject to a certain condition thereunder written, to

the effect following, that is to say, that if the above-bounden principal (the said defendant William Eooraem meaning), or his heirs, executors, administrators, or assigns, should, on or before the expiration of one year from the date of the importation of the goods, wares, and merchandize thereinafter mentioned, well and truly pay, or cause to be paid, unto the collector of customs for the port of New York, the sum of four hundred and twenty five 25/100 dollars, or the amount, 25 when ascertained, of the duties imposed by laws then existing, or to be thereafter enacted, to be due and owing on the goods, wares, and merchandize imported by him in the Velma from Malaga, , master, consisting of thirty-four p'k'g's wine (W. E. B.), 25 cts internal revenue stamp cancelled. or should in the mode prescribed by law, on or before the expiration of three years from the date of said importation, withdraw said goods, wares, and merchandise from the bonded store or public warehouse where they were deposited at the port of New York, and actually export them beyond the limits the United States, or transport them within three years as aforesaid in bond, to a port of the Pacific or western coast of the United States, under such regulations as the Secretary of the Treasury might from time to time prescribe, then that obligation was to be void, otherwise to remain in full force and virtue.

And the said plaintiffs aver, as a breach of the condition of the said bond or writing obligatory, that though the said time of one year 26 in the condition of the said bond or writing obligatory mentioned has long since expired, that he, the said defendant William E. Booraem, or any one on his behalf, at the city of New York, to wit, at the S. D. of N. Y. aforesaid, & within the jurisdiction of this court, did not within the said time of one year from the date of the importation of the said goods, wares, and merchandise, to wit, the said thirty-four p'k'g's wine (W. E. B.) well and truly pay or cause to be paid unto the collector of customs for the port of New York the sum of four hundred and twenty-five 25/100 dollars, or the amount, when ascertained, of the duties imposed by laws then existing or thereafter enacted to be due and owing on the goods, wares, and merchandise, to wit, the goods, wares, & merchandise imported by him in the Velma from Malaga, , master, consisting of thirty-four p'k'g's wine (W. E. B.) Nor did they, the said defendants, nor any one acting in their behalf, in the mode prescribed by law, on or before the expiration of three years from the date of said importation, withdraw said goods, wares, 27 and merchandise from the bonded store or public warehouse where they were deposited, at the port of New York, and actually export them beyond the limits of the United States, or transport them, within three years as aforesaid, in bond to a port of the Pacific or western coast of the United States, under such regulations as the Secretary of the Treasury did from time to time prescribe, but so to do have wholly neglected and refused, and still do neglect and refuse, to wit, at the southern district of New York, aforesaid, by means of which said several premises an action hath accrued to the said plaintiffs to have and demand from the said defendants the said sum of money above demanded, together with their damages by reason of the aforesaid unjust detention thereof, to one thousand dollars, and therefore they, the said plaintiffs, bring suit, etc.

NOAH DAVIS,
U. S. Attorney.

(*Endorsed:*) Bond No. 441. U. S. circuit court. The United
28 States of America vs. William E. Booraem & Robert Dumont. Declaration. Noah Davis, U. S. district att'y.

Please take notice that a rule has been entered in this cause with the clerk of this court, at his office in the city of New York, requiring the defendant Robert Dumont to plead to the declaration filed in this cause, and of which the within is a copy, within twenty days after service of a copy thereof and notice of said rule or judgment.

Dated August 3rd, 1872.

Yours, &c.,

NOAH DAVIS,
U. S. Dist. Att'y.

To DANIEL MARVIN, Esq.,
Att'y for Defendant Dumont.

29 U. S. circuit court, southern district of New York.

THE UNITED STATES OF AMERICA
vs.
WILLIAM E. BOORAEM & ROBERT DUMONT.

The defendant Robert Dumont, by Dan. Marvin, his attorney, comes separately and defends the wrong and injury, when, &c., and says that the said bond or writing-obligatory in the said declaration mentioned is not the deed of the above-named defendants, and of this he puts himself upon the country, &c.

And for a further plea in this behalf, by leave of the court here for this purpose first had and obtained, he says that the defendants do not owe to the plaintiffs the said sum of one thousand dollars above demanded, or any part thereof, in manner and form as the said plaintiffs have above thereof complained against them, and of this he, the said defendant, puts himself upon the country, &c.

And for a further plea in this behalf the said defendant, by leave
39 of the court here for this purpose first had and obtained, says that the said plaintiffs ought not to have or maintain their action aforesaid against the defendants, because he says that after the making of the said bond or writing-obligatory, and before the commencement of this action, to wit, on the first day of February, in the year 1865, at the city of New York, the said defendants paid to the said plaintiffs the said sum of money above demanded, and also paid to the said plaintiffs all the duties due and payable upon all the merchandizes in the condition of the said bond or writing obligatory mentioned.

And this he is ready to verify; wherefore he prays judgment if the said plaintiffs ought to have or maintain their action aforesaid thereof against the said defendants, &c.

DAN. MARVIN,
Def't's Att'y.

SIR: Take notice that under the several pleas above pleaded, and according to the form of the statute in this behalf made and provided,
this defendant will give in evidence, prove, and insist, upon the
31 trial of this cause and in bar of any recovery judgment therein, that amongst the wines imported by the defendant William E. Booraem, by the ship Velma, as stated in the delaration, were twenty-five quarter-casks of wine, containing in all eight hundred and sixteen

the Pacific or western coast of the United States, then this obligation to be void; otherwise to remain in full force and virtue.

(Signed) W. E. BOORAEM,
(Signed) R. DUMONT.

Sealed & delivered in the presence of—
(Signed) JOHN MCMICHAEL.

The following statement of account upon the goods covered by the bond, made and ascertained by the proper clerk at the custom-house, was endorsed on the bond:

Bond No. 441.

Importer, W. E. Booraem. Vessel, Velma.

CR.			DR.
	Liquidation.	Duty.	
Deduct.....	1865. May 29.....	Add.....	$425 25 251 50

39

Date.	Description of withdrawal.	Amount of duty.	Description of withdrawal.	Amount of duty.
Feb. 27.....	Con.....	425 25	Duty.....	676 75
			Paid.....	425 25
			Due.....	251 50
			Int. from Feb. 27, '65..	

Address: William E. Booraem, 22 Vesey st.; Robert Dumont, 36 Wall st.

Joel Blackmer, witness in behalf of the plaintiff, testified as follows:

I am adjustment clerk in the custom-house at the port of New York, in the collector's office. It is my duty to adjust and ascertain the account on goods covered by bonds, like the one in suit, on the expiration of such bonds, that is, three years from date of importation of the goods for which they are given. I adjusted this bond. My action is in the ordinary course of business, so far as the custom-house is concerned. I found
40 that the duties on the importation in question were $676.75, and that there had been paid $425.25, leaving a balance of $251.50 due the government. The interest on this, from the expiration of the bond, amounts to $101.85, making in all $353.35.

On cross-examination he testifies:

The date of the importation was January 18th, 1865. The bond was given on the same day. Four hundred and twenty-five $\frac{25}{100}$ dollars were paid by the principal, W'm E. Booraem, on the 27th day of February, 1865. The goods imported were withdrawn on the 27th of February,

1865, before the actual date of liquidation. The liquidation at the custom-house was made the 20th of March, 1865, at which time it was ascertained that $251.50 was due the government.

Counsel for the plaintiff then read in evidence the original warehouse entry and withdrawal entry of the goods in question, showing the liquidation and ascertainment of the rate and amount of duties on the goods, from which it appeared that the entry was made 21 January, 1865, and that on that day a calculation of the duties on the goods contained in it was made on the state of facts presented by the importer, amounting to $425.25; that thereafter, and after the report of the appraiser
41 and gauger respectively, as to the quality and quantity of the goods, an ascertainment of the rate and amount of duties upon the goods, based on such report, together with the invoice and original entry, was made by the proper liquidating clerk in the collector's office of the custom-house, as appeared by the identification of the "check" or initials of such clerk affixed to such calculation by said witness; that on such calculation the duties were ascertained to be $676.75.

Said witness also identified another "check," affixed to said ascertainment, as the initials of the proper liquidating clerk in the naval office of the custom-house, showing that in the regular course of business the entry had come from the liquidating department of the collector's office to said clerk in the naval office, and by him the amount of duties examined & concurred in as correct at $676.75.

It was further testified by said witness that a stamp on the back of the entry showed that it had come back from the naval office to the collector's office, and been stamped to show the liquidation was complete, which was the last step in the usual course of business in liquidating duties.

42 It was further proved on the part of the plaintiff that the bond in suit was in the form in use for many years prior to 1865 and now in use at the New York custom-house, and had been approved by the Secretary of the Treasury.

The plaintiff then rested.

Counsel for the defendant Robert Dumont then moved for a non-suit on the following grounds:

1. That the principal of said bond had paid to the collector of customs of the port of New York the sum of four hundred and twenty-five $\frac{25}{100}$ dollars before the expiration of one year from the date of importation and before the withdrawal of the goods, & thereby fully satisfied the condition of said bond as to the defendant Dumont, the surety, who is the only party served with process herein.

2. That the duties were not liquidated until March 20th, 1865, and subsequent to the withdrawal of the goods & the payment of $425.25.

43 3. That the bond was not given in conformity with the law.

4. That there is no evidence that there ever was an ascertainment or liquidation of the duties.

The court denied the motion, and the defendant Robert Dumont, by his counsel, then and there duly excepted to such ruling.

Counsel for the defendant Robert Dumont then offered evidence to show that said duties were erroneously and improperly assessed as to amount; that the value of said goods (wines) imported was not over fifty cents per gallon; that the legal duties thereon amounted to but the sum of $425.25, and not $676.75, as claimed, and that no notice was given of the liquidation to either of the parties to the bond.

(The offer was objected to by the plaintiff, the objection was sustained

by the court, and the defendant Robert Dumont, by his counsel, then and there duly excepted.)

Both sides rested.

The court directed the jury to find a verdict for the plaintiff for three hundred fifty-three and 75 dollars in gold coin of the United States, to which direction the defendant Robert Dumont, by his counsel, then
44 and there duly excepted.

And because none of the said exceptions so offered & made to the opinion & decision of the said circuit judge do appear upon the record of the said trial, therefore, on the prayer of the said defendant, by his counsel, the said judge hath to the bill of exceptions set his hand & seal, according to the statute in such case made and provided, this 20th day of October, 1874.

[L. S.] N. SHIPMAN, *Judge.*

(Endorsed:) U. S. circuit court for the southern district of New York. The United States of America vs. Robert Dumont, impleaded with William E. Booraem. Bill of exceptions. G. W. Cotterill, att'y for R. Dumont, No. 175 Broadway, New York. Filed Jan'y 14th, 1875.

45 Know all men by these presents that we, Louis A. Lienan and Clement Hurdt, are held and firmly bound unto the United States of America in the sum of fifteen hundred dollars, lawful money of the United States of America, to be paid to the said United States or its attorney, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, dated the ninth day of December, one thousand eight hundred and seventy-four.

Whereas lately, at a stated term of the circuit court of the United States for the southern district of New York, in a suit depending in said court between the United States of America and Robert Dumont, impleaded with William E. Booraem, judgment was rendered against the said Robert Dumont, and the said Robert Dumont having
46 obtained a writ of error & filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said United States citing & admonishing to be & appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation that if the said Robert Dumont shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then the above obligation to be void, else to remain in full force and effect.

LOUIS A. LENAN. [SEAL.]
C. HURDT. [SEAL.]

Sealed and delivered in the presence of—
WILLIAM H. BOWERS.

Approved by—

SAM'L BLATCHFORD.

JAN. 18, 1875.

47 CITY AND COUNTY OF NEW YORK, *ss:*

I certify that on this 9th day of December, 1874, before me personally appeared the above-named L. A. Linan & C. Hurdt, known to me to be the individuals described in and who executed the foregoing

bond, and severally acknowledged that they executed the same for the uses and purposes therein mentioned.

[SEAL.] WILLIAM H. BOWERS,
Notary Public N. Y. Co.

(Endorsed:) Louis A. Lienan and C. Hurdt, to the United States of America. Bond. Dated December 9th, 1874. Filed Jan'y 18, 1875.

Approved 15 Jan'y, '75.

GEO. BLISS, *U. S. Att'y.*

E. H. S.

48 *Assig't of error.*

In the Supreme Court of the United States.

ROBERT DUMONT, IMPLEADED WITH WILLIAM E. BOORAEM, pl'ffs in error,
vs.
THE UNITED STATES, DEF'TS IN ERROR.

Of October term, in the year one thousand eight hundred and seventy-five.

Afterwards, to wit, on the second Monday of October, in this same term, before the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, comes the said Robert Dumont, by George W. Cotterill, his attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit: that on the trial of this action certain evidence offered by said Dumont was excluded by the court; that the court directed a verdict for the United States,
49 and that the judgment herein was rendered in favor of the United States and against the said Dumont, whereas by right and the law of the land the same should have been in favor of said Dumont and against the United States.

And the said Robert Dumont prays that the judgment aforesaid may be reversed, annulled, and altogether held for nought, and that he may be restored to all things which he hath lost by occasion of the said judgment.

GEORGE W. COTTERILL,
Att'y for Pl'ff in Error.

(Endorsed:) Filed Sept. 23, 1875.

50 *Joinder in error.*

In the Supreme Court of the United States.

ROBERT DUMONT, IMPLEADED WITH WILLIAM E. BOORAEM, pl'ffs in error,
vs.
THE UNITED STATES, DEF'T IN ERROR.

And afterwards, to wit, on the second Monday of October, in October term, in the year one thousand eight hundred and seventy-five, the said The United States, by George Bliss, their attorney, freely come here into court and say that there is no error either in the record or proceed-

ings aforesaid, and pray that the said Supreme Court of judicature, before the justices thereof now here, may proceed to examine as well the record and proceedings aforesaid, as the matter aforesaid above assigned for error, and that the judgment aforesaid in form aforesaid given may be in all things affirmed, &c.

GEORGE BLISS,
Attorney for Defendant in Error.

51 (Endorsed:) Filed Sept. 23, 1875.

52 The United States of America, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Robert Dumont, impleaded with William E. Booraem, plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the same plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel Blatchford, judge of the circuit court of the United States for the southern district of New York, at the city of New York, in said district, this 18th day of January, in the year of our Lord one thousand eight hundred and seventy five.

SAM'L BLATCHFORD.

To GEORGE BLISS, Esq.,
U. S. Dist. Att'y.

53 Indorsed:) United States circuit court for the southern district of New York. Robert Dumont, impleaded with William E. Booraem, pl'ff in error, vs. The United States of America, def't in error. Citation. Filed Jan'y 20th, 1875. G. W. Cotterill, att'y for Robert Dumont, No. 175 Broadway, N. Y.

Due service of a copy of the within citation is hereby admitted.
Dated Jan. 19th, 1875.

GEORGE BLISS,
U. S. Att'y.

E. H. S.

(Indorsement on cover:) No. 308. Robert Dumont, impleaded with Wm. E. Booraem, plaintiff in error, vs. The United States. S. New York C. C. U. S. Filed 10th November, 1875.

ings aforesaid, and pray that the said Supreme Court of judicature, before the justices thereof now here, may proceed to examine as well the record and proceedings aforesaid, as the matter aforesaid above assigned for error, and that the judgment aforesaid in form aforesaid given may be in all things affirmed, &c.

GEORGE BLISS,
Attorney for Defendant in Error.

51 (Endorsed:) Filed Sept. 23, 1875.

52 The United States of America, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Robert Dumont, impleaded with William E. Booraem, plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the same plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel Blatchford, judge of the circuit court of the United States for the southern district of New York, at the city of New York, in said district, this 18th day of January, in the year of our Lord one thousand eight hundred and seventy-five.

SAM'L BLATCHFORD.

To GEORGE BLISS, Esq.,
U. S. Dist. Att'y.

53 (Indorsed:) United States circuit court for the southern district of New York. Robert Dumont, impleaded with William E. Booraem, pl'ff in error, vs. The United States of America, def't in error. Citation. Filed Jan'y 20th, 1875. G. W. Cotterill, att'y for Robert Dumont, No. 175 Broadway, N. Y.

Due service of a copy of the within citation is hereby admitted.
Dated Jan. 19th, 1875.

GEORGE BLISS,
U. S. Att'y.

E. H. S.

(Indorsement on cover:) No. 308. Robert Dumont, impleaded with W'm E. Booraem, plaintiff in error, vs. The United States. S. New York C. C. U. S. Filed 10th November, 1875.

Supreme Court

OF THE UNITED STATES.

ROBERT DUMONT, impleaded with WILLIAM E. BOORAEM, *Plaintiff in Error,* *vs.* THE UNITED STATES.	No. 50.

Brief and Argument of Plaintiff in Error.

Statement of the Case.

This is an action on a Custom House Bond which partly reads as follows:

"Know all men by these presents, that we, William "E. Booraem, as principlas, and R. Dumont, as sureties, "are held and firmly bound to the United States of "America in the sum of eight hundred and fifty 50-100 "dollars, to be paid to the United States, for the pay- "ment whereof we bind ourselves, our heirs, executors, "administrators and assigns, jointly and severally, firmly "by these presents, as witness our hands and seals this "eighteenth day of January, eighteen hundred and sixty "five.

"The condition of this obligation is such, that if the "above principals, or either of them, or either of their "heirs, executors, administrators, or assigns, shall on or "before the expiration *of one year*, to be computed from "date of importation of the goods, wares and merchan- "dise hereinafter mentioned, well and truly pay, or "or cause to be paid, unto the Collector of the Customs "for the Port of New York, the sum of *four hundred and* "*twenty-five* 25-100 *dollars*, or the amount of duties to "be ascertained under the laws now existing or hereafter "enacted, to be due and owing on goods, wares and "merchandise imported by him in the Velma, ———, "Master, from Malaga consisting of thirty-four pack- "ages wine. * * *" (P. 12 Trans. of Record)

The surety defends; the principal was not served with process.

The goods were imported January 18, 1865. The bond was given the same day, and on the 27th of February 1865, being the day on which the goods were withdrawn and just prior to withdrawal, the principal paid the said sum of $425 25, which was the precise amount designated in the bond.

Subsequently a liquidation took place on the 20th of March 1865, and it was ascertained that there was the sum of $251.50 due to the Government (pp. 12 & 13 Transcript of Record.)

The goods were withdrawn from warehouse for consumption, (p. 13 id.)

The defendant in error, recovered judgment under the direction of the Court for the aforesaid sum of $251.50, to which an exception was taken by the plaintiff in error.

Assignment of Error.

As an assignment of the error relied upon, the plaintiff in error claims:

That the payment of the sum of four hundred and twenty-five 25-100 dollars, within the year, satisfied the condition of the bond.

Argument.

I

1.—The right of the surety is *strictissimi juris*. He has satisfied the condition of the bond.

2.—The Statute requires that the duties should be liquidated before withdrawal for consumption.

> "Any merchandise deposited in bond in any public or private bonded warehouse, may be withdrawn for consumption within one year from the date of original importation, on *payment of the duties and charges* to which it may be subject by law at the time of such withdrawal. U. S. Rev. Statutes, sec. 2970."

The surety in this case had the right to suppose that such duties were liquidated before withdrawal.

It was the fault of the Collector that the duties were not properly ascertained.

The bond is not for the convenience of the importer, but for that of the collector.

3.—This is not the case (1) of a suit against the principal nor (2) of a forfeiture of the bond in consequence of non payment within the year, but the case of a suit against a surety whose obligation was fulfilled before the withdrawal of the goods.

4.—This precise question was determined in favor of the plaintiffs in error by Mr. Justice Story.

"Under the Act of March 2, 1799, ch. 128, § 2,—
"which expressly requires all bonds for the pay-
"ment of duties to be with a disjunctive condition,
"viz.: to pay a specific sum, or the amount of
"duties to be ascertained to be due the obligor,
"in a bond given for duties pursuant to the Act, has
"an election to perform, either part of the alterna-
"tive mentioned in the condition; and although the
"specific sum be less than the amount of duties, as
"they prove to be ascertained, he is discharged up-
"on payment of it."

United States *vs.* Thompson, 1 Gall., 388.

Plaintiff in error therefore asks that the judgment be reversed.

Jno. S. Mosby
for plaintiff in error
W. Wilson, Atty

In the Supreme Court of the United States.

OCTOBER TERM, 1878.

ROBERT DUMONT
vs.
THE UNITED STATES. } No. 50.

ERROR TO CIRCUIT COURT OF THE UNITED STATES FOR SOUTHERN DISTRICT OF NEW YORK.

DEFENDANTS' BRIEF.

In the Supreme Court of the United States.

OCTOBER TERM, 1878.

ROBERT DUMONT
vs.
THE UNITED STATES. } No. 50.

ERROR TO CIRCUIT COURT OF THE UNITED STATES FOR SOUTHERN DISTRICT OF NEW YORK.

DEFENDANTS' BRIEF.

STATEMENT.

The act of August 6, 1846, c. 84, § 1, authorized an importer to enter his goods for warehousing upon giving bond "in such form as the Secretary of the Treasury shall prescribe." (9 Stats., 53.) "These provisions in relation to the power of the Secretary are important, and were intended to guard the public against any abuse of the privileges which the warehousing act gave the importer." (Tremlett *v.* Adams, 13 Howard, 306, per TANEY, C. J.)

William E. Booraem desired to warehouse certain goods imported by him into New York in January, 1865, and accordingly gave bond in the form prescribed by the Secretary under the act aforesaid, which the plaint-

iff in error signed as surety, and upon which this action is based. It is conditioned that within one year from the date of importation there shall be paid $425.25, "*or* the amount of duties to be ascertained under the law," &c.; or else that the goods shall be re-exported or transported in bond, &c.

The goods constituting this importation were all withdrawn for consumption. The duties at time of entry were *estimated* at $425.25, which caused the insertion of this amount in the bond; but upon appraisement of them and liquidation of the duties the proper sum was found to be $676.75. The importer paid the $425.25 February 27, 1865, and this action was brought to recover the $251.50 remaining due.

BRIEF.

I.

Following the order of the record, in the absence of our opponent's brief, the first exception was taken to the refusal to nonsuit. (Record 13, fol. 42.)

Those courts that consider a nonsuit matter of discretion hold that exceptions do not lie to the refusal to exercise the right; but you have repeatedly said that in the Federal courts, after testimony has been introduced, the judge has no power to order a nonsuit against the plaintiff's consent. Elmore *v.* Grymes (1 Peters, 469); DeWolf *v.* Rabaud (*Id.*, 476); Crane *v.* Morris (6 Peters, 598); Silsby *v.* Foote (14 Howard, 218); Castle *v.* Bullard (23 Howard, 172).

There was no request to have a verdict for defendant directed. The four "grounds" for nonsuit were only stated as reasons for granting that motion, and can now subserve no other purpose. (Record 13, folio 42.)

II.

The defendant next offered to prove that the duties were erroneously assessed; that the value of the wines was but fifty cents a gallon, and consequently the duties only $425.25.

As there was no request for a merchant appraiser, the value as ascertained by the customs appraiser was conclusive, having been ratified by the collector.

III.

Plaintiff next objects that no notice was given of the liquidation of duties. The importer was entitled to none. It was his duty to ascertain at the custom-house the official action. Westray *v.* United States (18 Wall., 322). *A fortiori* the surety was entitled to no notice.

IV.

The verdict was peremptorily required by the proofs. The direction to give the amount in coin was necessitated by the legislation making duties payable in coin.

The interest was but an incident of the principal sum due, and must be computed and paid upon the same coin basis.

V.

The construction to be given to the language of the bond must be that which had been assigned it by long usage, and to accomplish its evident purpose, viz., the securing of such duties as were properly assessable upon the goods mentioned. It meant $425.25, or such other sum as may represent the duties, and payment of the specific amount named would not suffice unless that proved to be the amount of the duty.

EDWIN B. SMITH,
Assistant Attorney-General.

Atti di Arrolamento di Gallo ... 1348 ...